

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RICKY LEE WHEELDON,

Petitioner,

Civil No. 2:16-CV-10041

v.

HONORABLE ARTHUR J. TARNOW
UNITED STATES DISTRICT JUDGE

SHERMAN CAMPBELL,

Respondent.

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**OPINION AND ORDER GRANTING THE MOTION FOR AN EXTENSION OF
TIME TO FILE A REPLY BRIEF AND AGAIN DENYING THE PETITION FOR
WRIT OF HABEAS CORPUS**

On May 19, 2016, this Court issued an opinion and order denying petitioner's application for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. The Court declined to issue a certificate of appealability but granted petitioner leave to appeal *in forma pauperis*. *Wheeldon v. Campbell*, No. 2:16-CV-10041, 2016 WL 2910083 (E.D. Mich. May 19, 2016).

Petitioner has now filed a motion for an extension of time to file a reply brief to respondent's answer, along with a reply brief and attached exhibits. For the reasons stated below, the motion will be GRANTED. However, after reviewing the reply brief and the exhibits, the Court will again deny the petition for writ of habeas corpus.

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Petitioner requests an extension of time to file a reply to the respondent's answer, claiming that he did not receive a copy of the State's answer until April 28, 2016, even though respondent filed their answer with this Court on March 4, 2016.

Rule 5(e) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254 states that a habeas petitioner "may submit a reply to the respondent's answer or other pleading within a time fixed by the judge." The responsive pleading order signed by Magistrate Judge R. Steven Whalen on January 14, 2016 gave petitioner forty five days from the date of the responsive pleading to file a reply. Although respondent filed the answer with the Court on March 4, 2016, petitioner has presented evidence that he did not receive a copy of the answer until April 28, 2016. Petitioner filed his his reply brief and motion for an extension of time to file a reply brief on May 31, 2016, which was within forty five days of receiving respondent's answer. Petitioner promptly filed a reply brief in this case. Although the Court has entered judgment in this case, in the interests of fairness, this Court will accept and review petitioner's reply brief. See e.g. *McGee v. Scism*, 463 F. App'x 61, 64 (3rd Cir. 2012).

However, after reviewing petitioner's arguments in his reply brief, this Court will again deny habeas relief for the reasons stated in the original opinion and order denying habeas relief. Any error in denying habeas relief without reviewing

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petitioner's reply brief has now been rendered harmless by the Court's curative action in accepting and reviewing petitioner's belated reply brief. *Williams v. Warrior*, 631 F. App'x 587, 591 (10th Cir. 2015).

ORDER

IT IS ORDERED that the motion for an enlargement of time to file a reply brief (Dkt. # 10) is **GRANTED**. The Clerk of the Court is ordered to accept the reply brief (Dkt. # 11) and the exhibits (Dkt. # 12) for filing.

IT IS FURTHER ORDERED that the petition for writ of habeas corpus is again **DENIED WITH PREJUDICE** for the reasons stated by the Court in its opinion and order dated May 19, 2016.

S/Arthur J. Tarnow

Arthur J. Tarnow
Senior United States District Judge

Dated: June 14, 2016

I hereby certify that a copy of the foregoing document was served upon parties/counsel of record on June 14, 2016, by electronic and/or ordinary mail.

S/Catherine A. Pickles

Judicial Assistant